Perwira Affin Bank Bhd v Nasaruddin bin Abdul Jalil

HIGH COURT (SHAH ALAM) — CIVIL SUIT NO 22-391 OF 1997
CHIN FOOK YEN J
17 NOVEMBER 1998

Civil Procedure *— Irregularity — Affidavit — Whether jurat of the affidavit should not begin and end on a fresh page but should follow end of substantive or spill-over of the last substantive averment of the deposition — Rules of the High Court 1980 O 41*

Civil Procedure *— Summary judgment — Affidavit — Affidavit in support of application — Jurat in affidavits irregular — Affidavits inadmissible — Whether jurat in affidavits irregular as submitted by defendant*

The plaintiff's summons-in-chambers for summary judgment under O 14 of the Rules of the High Court 1980 ('the RHC') against the defendant was dismissed by the senior assistant registrar in the absence of the affidavit evidence in support (encls 4 and 6) which were earlier rejected on grounds of irregularity. The plaintiff appealed. In the appeal, counsel for the defendant argued that the jurat of the affidavit should not begin and end on a fresh page but rather should immediately follow the end of a substantive or spill-over of the last substantive averment of the deposition. Issues for determination by the court were whether or not cll 17 and 14 of encls 4 and 6 respectively were averments of a substantive nature or spill-over thereof and what was the legal requirement of what a jurat should be.

Held, allowing the appeal:

On a proper construction of O 41 of the RHC, the court was of the opinion that there was no such requirement for a jurat to follow substantive averment on the same page. If a deponent not only admits to having signed the affidavit with the completion of the jurat, but also admits the contents of the affidavit as his own, it will be futile for anyone else to dispute otherwise, particularly as such admission is to his own detriment (see p 9E–F).

[Bahasa Malaysia summary

Saman dalam kamar plaintif untuk penghakiman terus di bawah A 14 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') terhadap defendan telah ditolak oleh penolong kanan pendaftar dalam ketiadaan keterangan afidavit yang menyokong (lampiran 4 dan 6) yang telah ditolak sebelum ini atas alasan luar aturan. Plaintif merayu. Dalam rayuan, peguam defendan menghujahkan bahawa jurat afidavit tidak patut bermula dan berakhir pada muka surat baru tetapi seharusnya menyusul bahagian akhir substantif atau limpahan penegasan substantif terakhir deposisi. Isu-isu untuk penentuan oleh mahkamah adalah sama ada fasal 17 dan 14 lampiran 4 dan 6 masing-masing adalah penegasan yang bersifat substantif atau limpahannya dan keperluan undang-undang tentang apakah yang harus membentuk suatu jurat.

Diputuskan, membenarkan rayuan:

Pada suatu tafsiran yang betul ke atas A 41 KMT, mahkamah berpendapat bahawa tiada keperluan sedemikian untuk suatu jurat menyusul penegasan substantif pada muka surat yang sama. Sekiranya seorang saksi sumpah bukan sahaja mengakui telah menandatangani afidavit dengan penyempurnaan jurat, tetapi juga mengakui kandungan afidavit sebagai ia punya sendiri, adalah sia-sia untuk sesiapa yang lain untuk mempertikaikan sebaliknya, terutamanya memandangkan pengakuan sedemikian boleh menjejaskannya (lihat ms 9E–F).]

Notes

For cases on irregular affidavit, see 2(1) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 2441–2442.

For cases on affidavit for summary judgment, see 2(2) *Mallal's Digest* (4th Ed, 1998 Reissue) paras 4378–4403.

Case referred to

Voon Mow Chew v Menteri Dalam Negeri & Anor and other cases [1993] 4 CLJ 195 (refd)

Legislation referred to

Rules of the High Court 1980 O 14 r 1, O 41

Elaine Ong (*Shook Lin & Bok*) for the appellant/plaintiff.
Steven Pung (*Ishariah Ho Chong & Menon*) for the respondent/defendant.

Chin Fook Yen J: In this suit, the plaintiff filed a summons-in-chambers dated 10 December 1997 for summary judgment under O 14 r 1 of the Rules of the High Court 1980 ('the RHC') against the defendant. The plaintiff also filed two affidavits in support thereof, being encl 4 and encl 6. At the hearing on 11 March 1998, counsel for the defendant, in raising his preliminary objection, submitted that the jurat of each of the affidavits was irregular and therefore the affidavits were inadmissible. The senior assistant registrar upheld the objection raised and rejected the affidavits, and in the absence of the affidavit evidence in support, accordingly dismissed the application under O 14 of the RHC. Hence the appeal.

Counsel for the defendant repeated the same argument before me. He submitted that the jurat of the affidavit should not begin and end on a fresh page but rather should immediately follow the end of a substantive or spill-over of the last substantive averment of the deposition. He then cited the case of *Voon Mow Chew v Menteri Dalam Negeri & Anor and other cases* [1993] 4 CLJ 195 at p 198, in support of his argument. He continued to explain that the jurat in each of the cases, viz encls 4 and 6, began from the last clause of the affidavit and ended on the same page, and he contended that the last clause did not contain any substantive averment.

In order to understand readily the argument advanced by defendant's counsel, it is perhaps helpful to reproduce below the page on which the jurat

began and ended in each of the affidavits. In encl 4 at p 6, the affidavit continued with cl 17 and followed by the jurat as follows:

page 6

17 Dengan yang demikian, saya dengan hormatnya memohon untuk satu perintah seperti yang dikehendaki dalam permohonan plaintif di sini.

Diikrarkan di Kuala Lumpur oleh)
)
Tn Haji Ismail bin Shamsudin pada)SD
)
haribulan 9 DIS 1997)

Di hadapan Saya
Sd
Pesuruhjaya Sumpah Malaysia
No W023
Dato Ng Mann Cheong

In encl 6 at p 5, the affidavit continued with cl 14 and followed by the jurat as follows:

page 5

14 Oleh yang demikian, saya menyatakan bahawa defendan tidak menunjukkan sebarang pembelaan dan saya memohon perintah seperti yang dipohon dalam permohonan plaintif di sini.

Diikrarkan di Kuala Lumpur oleh)
)
Tn Haji Ismail bin Shamsudin pada)SD
)
haribulan 6 JAN 1998)

Di hadapan Saya
Sd
Pesuruhjaya Sumpah Malaysia
No W023
Dato Ng Mann Cheong

My first task is to find out whether or not cl 17 and cl 14 of encl 4 and encl 6 respectively were averments of a substantive nature or spill-over thereof. I have to agree with defendant's counsel that the said clauses were of a formal standard submission or inference and not even an averment, disclosing nothing substantive. But that is not the end of the matter. What is the legal requirement of what a jurat should be? What have the relevant rules got to say about it? Order 41 of the RHC provides as follows:

Affidavits

1 (1)...
(2)...

A (3)...

(4)...

(5)...

(6)...

(7)Every affidavit must be signed by the deponent and the jurat must be
B completed and signed by the person before whom it is sworn.

(8)A jurat must be in one of the forms in Form 78.

No 78

Forms of Jurat (O41 r 1)

C (Title as in action)

(a) To an affidavit by one deponent .....
Sworn (or affirmed) on the ..... day of .....,
19..... at (Through the interpretation of .....).

D Before me

.....

Commissioner for Oaths

E I have read and re-read the relevant rules in the hope to find in the said rules provisions to support the contentions of the defendant. The wordings of the relevant rules are quite clear and straightforward. The rules are in fact completely silent on the issue contended, and I am of opinion that there is no such requirement for a jurat to follow substantive averment on the same page. On my part, if a deponent not only admits to having signed the
F affidavit with the completion of the jurat, but also admits the contents of the affidavit as his own, it will be futile for anyone else to dispute otherwise, particularly such admission is to his own detriment. I am prepared to envisage a situation where a deponent disputes and challenges as to the contents of an affidavit as his own, whilst admitting having signed the affidavit completed with jurat. In the context, there is rationale for the
G statement, as expressed in *Mallal's Rules of the High Court 1980* at p 478 that 'the jurat should follow immediately after the end of the deposition. Affidavits should not end at a page and the jurat begins on a following page. There must be sufficient indication that the jurat relates directly to the deposition' as a matter of prudence.

H In the present case, I hold that the jurats of the affidavits are regular. That apart, the deponent in his subsequent affidavit encl 6 supported his earlier affidavit encl 4. The two affidavits being consonant, it is obvious that the jurats related to the depositions.

For the reasons aforesaid the appeal is allowed. The O 14 application is
I remitted back to the senior assistant registrar for hearing on its merits. Costs in the cause.

Appeal allowed.

Reported by Mohd Rizal Abidin